

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE:

B-181014

DATE:

JUL 10 1974

MATTER OF:

DIGEST:

40928  
95262

Claim of Specialist Fourth Class Bobby B. Binns for active duty pay and allowances during a period of disability following hospitalization. A Reserve member who contracted hepatitis while serving on a two-week period of active duty for training, was hospitalized, but following release from the service hospital was ordered to report for treatment to the service medical facility nearest to his home. The member is entitled to continue to receive basic pay and allowances under 10 U.S.C. 3722(b)(2) from time of his release from the hospital until the attending service medical officer certified that the member had recovered, even though not rehospitalized, because 10 U.S.C. 3722 does not require the status as a "patient" in a hospital, but rather, the continuance of the disability.

This action is in response to a letter dated February 1, 1974, with enclosures (file reference ATZR-CMFAER), from the Finance and Accounting Officer, Fort Sill, Oklahoma 73506, which was forwarded to our Office by letter dated April 1, 1974, from the Office of the Comptroller of the Army (file reference DAGA-CSJ-F) requesting an advance decision as to the entitlement of Specialist Fourth Class Bobby B. Binns, USAR, SSAN 450-86-6429, to active duty pay and allowances in the circumstances described and has been assigned Control No. DO-A-1221 by the Department of Defense Military Pay and Allowance Committee.

The record indicates that the member, while serving on active duty for training during the period June 9 through June 22, 1973, at Fort Chaffee, Arkansas, apparently contracted a disease which was diagnosed as acute viral hepatitis and was admitted to Reynolds Army Hospital, Fort Sill, Oklahoma, on June 15, 1973. On June 25, 1973, he was discharged to his home with instructions to report to the nearest military facility for treatment and evaluation. A clinical record from the Naval Hospital at Corpus Christi, Texas, indicates that he was released by that facility as fully recovered on July 10, 1973.

It also appears from the record that the member received active duty pay and allowances for the ordered period of active duty June 9 through 22, 1973, and the subsequent period of hospitalization at Reynolds Army Hospital from June 23 through 25, 1973.

On the basis of the above facts and the provisions of Rule 6, Table 8-2-4, Department of Defense Military Pay and Allowances Entitlements Manual, the Finance and Accounting Officer has expressed doubt as to the propriety of making payment on a voucher in the amount of \$322.00 in favor of Specialist Binns for active duty pay and allowances for the period June 26 through July 10, 1973, during which period the member was incapacitated at his home but was no longer hospitalized.

Section 3722, title 10, United States Code, provides in pertinent part as follows:

"(a) Under such regulations as the President may prescribe, the following persons are entitled to the benefits of subsection (b):

"(1) Each Reserve of the Army, and each officer who has no regular or reserve appointment and who is injured, or contracts a disease, in line of duty while on active duty in time of peace.

\* \* \* \* \*

"(b) So far as any benefit named in this subsection is not provided for him under section 3721 of this title, any person named in subsection (a) is entitled to—

"(1) the hospitalization, rehospitalization, and medical and surgical care in a hospital and at his home appropriate for the treatment of his injury or disease until the resulting disability cannot be materially improved by further hospitalization or treatment;

"(2) the basic pay and allowances, whether in money or in kind, to which he was entitled at the time when the injury was incurred or the disease contracted, during the period of his hospitalization or rehospitalization, but not for more than a total of six months after the end of his prescribed tour of duty or training;"

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Rule 6, Table 8-2-4 of the Department of Defense Military Pay and Allowances Entitlements Manual provides that if an Army Reserve member is disabled in the line of duty due to disease while serving on active duty for 30 days or less, he is entitled to pay and allowances for the period of hospitalization but not more than a total of 6 months after the end of the member's prescribed tour duty or training.

In decision B-147477, April 30, 1969, we stated that the test for determining the right of a reservist to continue to receive pay and allowances under the provisions of 10 U.S.C. 3722 is not a technical record status as a "patient" in a hospital, but rather, the continuance of the disability. In this decision we relied upon the service medical officer who attended the member and his certification that the member had recovered from his disease and was fit for military duty and terminated payment of pay and allowances on that date.

In the present case, the attending service medical officer at the Naval Hospital at Corpus Christi, Texas, certified that the member did not recover from the disabling effects of the disease until July 10, 1973. It is our view, therefore, that the member is entitled to receive basic pay and allowances for the period June 26 through July 10, 1973, if otherwise correct.

R.F. HEMMEL

Deputy      Comptroller General  
of the United States